IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	ID. No. 0010011398
	)	
STACEY M. FAISON	)	
	)	
Defendant.	)	
	)	

OPINION AND ORDER

On the Defendant's Motion for Post-conviction Relief

Submitted: November 22, 2004
Decided: March 7, 2005

Renee L. Hrivnak, Esquire, Deputy Attorney General, Department of Justice, 820 North French Street, Wilmington, DE 19801.

Edmund M. Hillis, Esquire, Office of the Public Defender, Carvel State Office Building, 820 North French Street, Wilmington, Delaware, 19801.

Stacey M. Faison, P.O. Box 420, Fairton, New Jersey, 08320, Defendant.

TOLIVER, JUDGE

Presently before the Court is the motion filed by the Defendant, Stacey M. Faison, seeking post-conviction relief pursuant to Superior Court Criminal Rule 61. That which follows is the Court's resolution of the issues so presented.

STATEMENT OF FACTS AND NATURE OF PROCEEDINGS

On November 20, 2000, the Defendant was indicted by the grand jury and charged with Possession with Intent to Deliver, Maintaining a Vehicle for Keeping Controlled Substances and other related crimes. On January 4, 2001, the Defendant was sentenced to five years in prison in the State of Oklahoma. Delaware subsequently lodged a warrant or detainer with the State of Oklahoma directing that the Defendant be returned to Delaware for prosecution here once his Oklahoma sentence had been completed.

On April 16, 2001, the Defendant filed what he nominated as a motion for a speedy trial with this Court, asking that the charges lodged in Delaware be tried within the time limits prescribed under the Interstate Agreement on Detainers Act (IAD).[1] The Court, without taking any additional action,

[1] The Interstate Agreement on Detainers Act states that, "prisoners incarcerated in a foreign state who have charges pending in Delaware have specific rights to a trial in Delaware within 180 days of the giving of proper written notice of a demand for same." *State v. Davis*, 1993 WL 138993 *2 (Del.

forwarded the document to the Defendant's Delaware attorney, Edmund M. Hillis, Esquire. It was not served on anyone else or on any other entity at that time. Nor were any other efforts made by the Defendant to comply with the IAD.

The Defendant completed his Oklahoma sentence on June, 2, 2003. On August 7, 2003, the Defendant provided written notice to the appropriate custodial officials in Oklahoma requesting that the Delaware charges against him be resolved. That notice was then sent to the State of Delaware. It was received by the appropriate officials of this state on August 15, 2003.[2]

The Defendant was subsequently transported to Delaware in order to answer the charges against him as requested. On November 10, 2003, the Defendant appeared in this Court with Mr. Hillis and pled guilty to Maintaining a Vehicle for Keeping Controlled Substances. He was sentenced by the Honorable Richard S. Gebelein to three years in prison suspended after ten days for probation.

Supr.) Delaware entered into the IAD when the General Assembly enacted the "Uniform Agreement on Detainers" into law in 1969. *Id.*, *citing* 11 *Del. C.* §§ 2540-2550; *Del. Laws* c. 223. The purpose of the Act is to enable a prisoner in a foreign state to compel prompt trial of a criminal charge in Delaware without awaiting release from the other state. *Pittman v. State*, 301 A.2d 509 (Del. 1973).

[2] This notification and request of disposition met the requirements of 11 *Del. C.* § 2542.

On October 5, 2004, the Defendant filed the instant motion asking the Court to grant him a new trial. In support of that motion, he alleged that his plea was involuntarily entered because of the ineffective assistance of counsel he received from Mr. Hillis. The essence of the Defendant's claim appears to be that Mr. Hillis was ineffective because he failed to protect the Defendant's right to a speedy trial under the IAD. Had he done so, or at least advised him as to the existence of that right, the Defendant would not have entered the plea but would have presented a defense to the charges. The State disagreed and filed a response on November 22, 2004. Having now had the opportunity to review each of these submissions, that which follows is the Court's response.

DISCUSSION

Before the Court can reach the merits of a motion for post-conviction relief, the movant must first overcome the substantial procedural bars contained in Superior Court Criminal Rule 61(I).[3] Under Rule 61(I)(1), post-conviction

[3] *Flamer v. State*, 585 A.2d 736, 745 (Del. 1990); *Younger v. State*, 580 A.2d 552, 554 (Del. 1990); *Saunders v. State*, 1995 WL 24888, at *1 (Del. Supr.).

claims for relief must be brought within three years of the movant's conviction becoming final.[4] Grounds for relief not asserted in a prior post-conviction motion are thereafter barred unless consideration of the claim is necessary in the interest of justice.[5] Similarly, grounds for relief not asserted in the proceedings leading to the judgment of conviction will not be considered unless the movant demonstrates: (1) cause for the procedural default, and (2) prejudice from any violation of the movant's rights.[6] Lastly, the Court is prohibited from reviewing claims for relief that were formerly adjudicated in the proceedings concluding in the defendant's conviction or in a prior post-conviction proceeding.[7]

The procedural bars set forth in Rule 61(I)(1)-(4) may be lifted if the defendant establishes a colorable claim that there has been a "miscarriage of justice" under Rule 61(I)(5). A colorable claim of "miscarriage of justice" occurs when there is a constitutional violation that undermines the fundamental legality, reliability, integrity or fairness of

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[4] Super. Ct. Crim. R. 61(i)(1).

[5] Super. Ct. Crim. R. 61(i)(2).

[6] Super. Ct. Crim. R. 61(i)(3).

[7] Super. Ct. Crim. R. 61(i)(4).

the proceedings leading to the judgment of conviction.[8] This exception to the procedural bars is very narrow and is only applicable in very limited circumstances.[9] The defendant bears the burden of proving that he has been deprived of a "substantial constitutional right."[10] A claim of ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution, by its very nature, qualifies as just such an exception.[11]

Under the standard outlined in *Strickland v. Washington,*[12] two factors must be established in order to prevail on a claim of ineffective assistance of counsel. First, a defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness. Second, he or she must show that counsel's actions were prejudicial to the defense, creating a reasonable probability that, but for counsel's error, the result of the proceeding would have been different.[13] The *Strickland* standard is highly demanding and

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[8] Super. Ct. Crim. R. 61(I)(5).

[9] *Younger*, 580 A.2d at 555.

[10] *Id.*

[11] *Mason v. State*, 725 A.2d 442 (Del. 1999); *State v. McRae*, 2002 WL 31815607, at *5 (Del. Super. [Cite].).

[12] 466 U.S. 668, 104 S. [Cite]. 2052, 80 L. Ed. 2d 674, (1984).

[13] *Id.* at 694.

under the first prong of the test, there is a "strong presumption that the representation was professionally reasonable."[14] The Defendant must also "[o]vercome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy."[15]

In the instant case, the Defendant's motion was filed well within the statutorily prescribed time period. This is also the first post-conviction relief sought by the Defendant, and as a result, there are no concerns relative to the prior adjudication of an issue or the failure to raise the same. The Court must therefore proceed to examine the substance of the Defendant's claims. Unfortunately for the Defendant, they claim are without merit.

The Defendant's claim that he was not afforded effective assistance of counsel rests primarily on his belief that he told his attorney, Mr. Hillis, that he, the Defendant, had filed a motion for speedy trial and that no action had been in response to that motion. His rights under the IAD had been abridged as a result. According to the Defendant, Mr. Hillis still advised him it was in his best interest to plead guilty

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[14] *Stone v. State*, 690 A.2d 924, 925 (Del. 1996); *Flamer*, 585 A.2d at 753.

[15] *Strickland*, 466 U.S. at 689.

on November 17, 2003, notwithstanding the existence of whatever rights the Defendant had under the aforementioned statute.

Under the IAD, "prisoners incarcerated in a foreign state who have charges pending in Delaware have specific rights to a trial in Delaware within 180 days of the giving of proper written notice of a demand for same."[16] Section 2542 of the IAD reads in pertinent part:

> (a) Whenever a prisoner has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of imprisonment and the request for a final disposition to be made of the indictment, information, or complaint . . . . The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any

[16] *Davis*, 1993 WL 138993 *2 (Del. Supr.)

> decisions of the state parole agency relating to the prisoner.

The IAD further provides that after having received written notice from the prisoner, the official having custody of the individual shall send notice to the appropriate prosecuting officer and the appropriate court.

> (b) The written notice and request for final disposition referred to in subsection (a) of this section shall be given or sent by the prisoner to the Commissioner of Correction or other official having custody of the prisoner, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court registered or certified mail, return receipt requested.

The Defendant filed his first request for action relative to the Delaware charges on April 16, 2001. However, this first filing did not meet the requirements of § 2542(a) & (b). There was no evidence that the written notice or request for final disposition of these charges was sent to the official having custody of the Defendant or that it was accompanied by the certificate of that official when forwarded to Delaware.[17] The notices that clearly complied with the IAD were not received in Delaware until August 15, 2003, after the Defendant began his second effort to resolve the Delaware

[17] 11 Del. C. § 2542(b).

charges. It was at this point that the 180 day period began to run. It would have expired in February 2004.

As noted above, on November 10, 2003, the Defendant appeared before the Court with his attorney and pled guilty to Maintaining a Vehicle for Keeping Controlled Substances. This case was therefore resolved well before the running of the 180 period under the IAD. Since the Defendant pled guilty on November 10, 2003, there was no claim for the Defendant's attorney to raise. If there was no claim to raise, the Defendant's attorney could not have been ineffective.

Stated differently, the Defendant has not met the standard pronounced in *Strickland* to prove ineffective assistance of counsel. He has not shown that defense counsel's representation fell below an objective standard of reasonableness because the right the Defendant claims that Mr. Hillis failed to assert, had not been violated. Given the Defendant's failure to establish the existence of any error on the part of his counsel, there is no need to reach the second prong of *Strickland*, i.e., whether the Defendant had been prejudiced by counsel's representation.[18]

[18] Even if the Court were to reach the second prong of *Strickland*, there is no evidence that the outcome of the trial would have been different or its integrity substantially compromised.

CONCLUSION

For the foregoing reasons, the Defendant's motion for post-conviction relief must be, and hereby is, **denied.**

IT IS SO ORDERED.

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Toliver, Judge